

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NORMAN DACK,

Plaintiff,

v.

J. GATCHELL *et al.*,

Defendants.

Case No. C04-5763FDB

ORDER DENYING  
COUNSEL

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's second motion for appointment of counsel. (Dkt. # 19). This motion contains a request for telephonic appearance as well. The motion was filed two days after the court entered an order denying plaintiff's first motion for appointment of counsel. The Court, having reviewed plaintiff's motion does hereby find and ORDER:

(1) There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to

1 articulate his claims *pro se* in light of the complexity of the legal issues involved. Wilborn, 789 F.2d  
2 at 1331.

3 Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*. Moreover, it  
4 appears that this case does not involve exceptional circumstances which warrant appointment of  
5 counsel. Accordingly, Plaintiff's Motion to Appoint Counsel and telephonic appearance is **DENIED**.

6 (2) The Clerk is directed to send copies of this Order to Plaintiff and counsel for Defendant.

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8 DATED this 21<sup>st</sup> day of April, 2005

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10 /S/ J. Kelley Arnold  
11 J. Kelley Arnold  
12 United States Magistrate Judge  
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